

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9587 OF 2017

Aone Land Developers

.. Petitioner

Versus

1 The State of Maharashtra

2 Joint Secretary/Director

3 Pune Municipal Corporation

4 Director, Town Planning

5 Assisant Director, Town Planning .. Respondents

...

Mr. G.S. Godbole with Mr.Parag Tilak and Ms.Shruti Tulpule for the petitioner.

Mrs.M.P. Thakur, AGP for the State.

Mr.R.M. Pethe for respondent no.3.

**CORAM: RANJIT V. MORE AND
 BHARATI DANGRE, JJ.**

RESERVED : 27th SEPTEMBER 2019

PRONOUNCED : 20th NOVEMBER 2019

JUDGMENT:- (Per Smt.BHARATI DANGRE, J)

1 The petitioner, a partnership firm titled as Aone Land Developers has invoked the writ jurisdiction of this Court praying for quashing and setting aside of an order dated 5th April 2017 passed by the Urban Development Department of the State of Maharashtra, thereby rejecting the purchase notice served by the petitioner under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as 'MRTP Act').

The petitioner has sought a relief of confirming the said Purchase Notice in respect of land bearing Survey No.113 admeasuring 20 Are out of the land admeasuring 43 Are at village Dhayari, Taluka Haveli, District Pune. In the alternative, the petitioner has sought directions to the Respondent No.1 to consider its application under Section 49 of the MRTP Act by issuance of a writ in the nature of mandamus.

2 The draft Development Plan under Section 28(4) of the MRTP Act for the extended area of the Pune Municipal Corporation (PMC) was published on 30th November 2005. It was forwarded to the State Government for sanction under the provisions of Section 30 of the MRTP, wherein the area covered by 30 meter wide D.P Road was shown as an area in respect of which the Pune Municipal Corporation being planning authority was designated as the acquiring body. The contention of the petitioner is that he purchased the land admeasuring 40R situate in Survey No.113, Mouza Dhayari, Taluka Haveli, District Pune by a Deed of Conveyance dated 1st March 2015 from one OmPrakash Madhuran Vyas and Mr.Madhuran Laxman Vyas. This Deed was registered in the office of Joint Registrar (Class-II), Haveli-21 and was falling within the area of Pune Municipal Corporation and the land was classified in residential zone in the development plan as well Final Development Plan. The name of the petitioner was recorded in the 7/12 extract as purchase/Class-I

owner. According to the petitioner, the original map of Measurement Register No. 13526/2015 did not independently show the area covered. However, the part plan contain the 30m wide D.P. Road at Dhayari within the municipal limits of Pune Municipal Corporation, reflecting that Survey No.113 is partly affected by the said 30m wide D.P. Road. The petitioner has placed on record the said part plan of the Draft Development Plan. The petitioner who obtained a demarcation certificate from the PMC issued on the basis of measurement carried out by the concerned officers of the Chief Land Surveyors from the office of the Dy. Secretary of Land Records, Haveli submit that in the measurement plan of the measurement register, a portion of the land falling on the western side of the land purchased by the petitioner was covered by a 30m wide D.P Road.

On account of the aforesaid reservation of 30m wide D.P. Road affecting the major portion of the petitioner's land, the petitioner being unable to sell the said land except at a lower price than what would have been reasonably expected to sell, sans the designation/demarcation of the 30m wide D.P. road, served a purchase notice on the Respondent no.1 on 17th November 2016. The said notice after inscribing details of the land owned by the petitioner in furtherance of a deed of conveyance dated 1st March 2015 was stated to be falling within the area of Pune Municipal Corporation and situated in the residential zone of the draft D.P for the said area the Purchase Notice came to be served on the

State Government under Section 49 of the MRTP Act. The Purchase Notice categorically stated that the notice is served on account of clauses (a), (b) and (e) of Section 49(1) and therefore, it was not accompanied with any documents and particularly any application for development permission filed before the Planning Authority or any order passed by the Planning Authority as contemplated by Section 49(2) of the said Act. The petitioner specifically pleaded that on account of the designation/reservation as the case may be, or part of the land bearing Survey No.1131, the land has become incapable for reasonable beneficial use in its existing state. A caveat was also put forth by stating that the petitioner is aware that it is possible to develop the remaining portion of the land, which is included in the residential zone and which remain unaffected by the designation/reservation under the 30m wide road and the possibility of surrendering the said land to the PMC would entail the petitioner an FSI/TDR of the said portion was also within the knowledge of the petitioner while issuing the Purchase Notice. However, though conscious of the fact that TDR generated in the 1st Year would result in incentive in terms of the D.C. Regulations published by the Urban Development Department under Section 37 (1AA) of the MRTP Act, since the net plot area of the land would be substantially reduced after surrendering the land covered by 30m wide D.P road to PMC and since it would result into severe planning constraints for construction on the remaining land, particularly

being deficit of sufficient parking space which would be required to be provided as per the relevant Development Control Regulations of PMC, inability was expressed to consume the TDRs generated from possible surrender of land covered by 30m wide D.P Road to the PMC and on the land being required to sell in the open market with the TDR on the remaining land, the petitioner expressed his apprehension to fetch ready and willing buyers.

3 In the backdrop of the substantial averments contained in the said notice dated 17th November 2016, the Purchase Notice came to be served on the State Government calling upon the State Government to confirm the purchase notice, conscious of the fact that the State Government is likely to reject the said notice on the ground that the land owners can avail FSI/TDR, the petitioner – a noticee made it clear that whether to avail of TDR or not is complete volition of the land owner and he cannot be forced to accept the same. Though not necessary, by way of abundant precaution, the petitioner also forwarded an advance intimation by forwarding the copy of Purchase Notice to the Planning Authority i.e. PMC through its Municipal Commissioner and also to the Director of Town Planning, Maharashtra State, Pune. Attention of the State Government was also invited through the said notice to the provision of sub-section (5) of Section 49 that if the purchase notice is not

confirmed within a period of six months from the date on which the purchase notice is served on the State Government, the deeming fiction created under sub-section (5) would come into effect. Attention was also invited to the procedure to be followed on the confirmation of the Purchase Notice as contemplated under sub-section (7) of Section 49 of the Act.

4 It is the case of the petitioner that on receipt of the said Purchase Notice, the Assistant Director, Town Planning, Pune addressed a letter to the counsel for the petitioner intimating him to supply the copies of relevant documents for its submission to the State Government and this included the documents of title, measurement map as well as the physical map of the plot in respect of which the purchase notice was served. The Pune Municipal Corporation acknowledged the receipt of the Purchase Notice. On a communication from the Assistant Director of Town Planning, Pune dated 9th January 2017, asking the petitioner to supply the copies of the relevant documents in relation to land covered by Section 49 notice and for submission of the report to the State Government, the petitioner responded by stating that he had already submitted all the corresponding documents along with a copy of Purchase Notice under section 49 of the MRTP Act to the Assistant Director of Town Planning, PMC by his earlier letter. The case of the petitioner is that he was called for hearing by the Joint Secretary in the Urban

Development Department and he also submitted written submission along with the relevant authorities in form of precedents. This resulted in passing of an order on 5th April 2017 by the Urban Development Department by which a Purchase Notice of the petitioner came to be rejected on the ground that the petitioner has not submitted any development proposal to the Planning Authority in respect of the land in question and since the land is situated in the residential zone, it is always open for the petitioner to construct upon the remaining portion of the said land by using the FSI/TDR of the reserved D.P Road. It is this order which is assailed in the present Writ Petition.

5 Shri Godbole appearing for the petitioner would assail the impugned order by submitting that the approach of the respondent is erroneous and according to Shri Godbole, the premise on which the purchase notice has been rejected is completely unfounded. He would submit that a bare reading of Section 49 of the MRTP Act do not contemplate a constricted approach as has been adopted by the State Government and merely because no proposal for development has been filed and negated which did not conclusively lead to an inference that the applicant was deprived from the beneficial use of the land in question, is no justification and according to him, the said order is unsustainable in law. Shri Godbole has placed reliance on the judgment of the Apex Court in case of Chhabildas Tukaram

Khadke Vs. State of Maharashtra & Ors,¹ and according to him, the said judgment authoritatively declares the position of law qua section 49 to the effect that the scheme contemplated by Section 49 is totally distinct from that of Section 127 and he would submit that the said judgment also carpet out the procedure to be followed where a Purchase Notice has been served and confirmed within the period specified in Section 49 and it takes the process further by ruling that where a purchase notice has been served and confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice and if it does not do so, the reservation/designation etc. shall be deemed to have lapsed. However, period of 10 years have passed from the date of publication of the plan in question and a purchase notice has been served under Section 127 and no steps have been taken within a period of one year from the date of service of such notice, all proceedings have been held to be deemed to have been lapsed. According to Shri Godbole, it has been conclusively held that even in case covered by Section 49, drill of Section 126(4) and Section 127 will have to be followed subsequent to the appropriate authority making the application to acquire the land within the period specified in Section 49(7). By relying on the aforesaid judgment, Shri Godbole would press for the reliefs sought in the writ petition.

¹ (2018) 2 SCC 784

6 The petition is opposed by the State authorities by filing an affidavit sworn by one Vijay B. Shende, Assistant Director of Town Planning, Pune Branch dated 19th August 2018. It is admitted in the affidavit that the Government has sanctioned the Development Plan of extended limit of PMC on 2nd March 2012 and it has come into force with effect from 16th April 2012 and as per its sanctioned Development Plan, Survey No.1131 of Village Dhayari is partly affected by 30m wide D.P. Road and the remaining part is included in the residential zone. The affidavit also admits of the notice being issued to the petitioner calling him to participate in the hearing process carried on the purchase notice being served. The contents of the impugned order are then reiterated and it is stated that since the petitioner has not submitted any proposal regarding development of the remaining land, excluding road of village Dhayari bearing Survey No.113 to the Pune Municipal Corporation, it cannot be said that the petitioner has been deprived of the beneficial use of the land.

7 In support of the Pune Municipal Corporation, we have heard Shri Pethe who would strenuously argue that there is a succinct distinction between the two provisions i.e. Section 49 and Section 127 and he would submit that under Section 127, there is lapse of the reservation on the failure of the planning authority to take steps for acquisition of the land whereas, in Section 49, the Purchase Notice culminates into the State

Government either confirming the Purchase Notice or directing that the planning permission be granted without condition or subject to such conditions as will make the land capable of reasonable beneficial use. According to Shri Pethe, the draft Development Plan was published on 30th November 2005 and after following the due procedure contemplated under the Act, it was finalized on 29th May 2009 with effect from 30th June 2009. He urge that the petitioner has purchased the land by a registered conveyance deed on 1st March 2015 and while purchasing the said land, he was aware of the existing reservation in the final Development Plan in form of a 30 m wide D.P. Road and with open eyes, he had purchased the said piece of land. He would submit that the notice dated 17th November 2016 issued by the petitioner complain about the embargo created on the said piece of land which covered a reservation, he cannot complain of the same not being put to beneficial use unless he had approached the Planning Authority and his permission for development of the land was turned down. Shri Pethe would assert that having regard to sub-section (4) of Section 49, the Purchase Notice is to be accompanied by copy of application for permission of development as contemplated under Section 44 and 45 of the Act. On a Purchase Notice being served, according to him, only two eventualities can occur i.e. either the notice is confirmed or a direction is issued to the planning authority to grant the permission without condition or subject to such condition as will

make the land capable of reasonable beneficial use. He would submit that in any other case, it would refuse to confirm the purchase notice when the only barrier of affording an opportunity of hearing to the applicant. Thus, according to Shri Pethe, the refusal to confirm the Purchase Notice by the petitioner do not suffer from any legal infirmity but rather follows the mandate as laid down in Section 49 of the MRTP Act.

8 With the assistance of the learned counsel, we have perused the petition as well as its accompanying annexures. A very breviloquent issue arise in the present writ petition and since it revolves around Section 49, we deem it fit to reproduce Section 49 which reads thus :

49 Obligation to acquire land on refusal of permission or on grant of permission in certain cases.

1) Where

(a) any land is designated by a plan as subject to compulsory acquisition, or

(b) any land is allotted by a plan for the purpose of any functions of a Government or local authority or statutory body, or is land designated in such plan as a site proposed to be developed for the purposes of any functions of any such. Government, authority or body, or

(c) any land is indicated in any plan as land on which a highway is proposed to be constructed or included, or

[(d) any land for the development of which permission is refused or is granted subject to conditions, and any owner of land referred to in clause (a), (b), (c) or (d) claims—

(i) that the land has become incapable of reasonably beneficial use in its existing state, or

(ii) (where planning permission is given subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions; or]

(e) the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it except at a lower price than that at which he might reasonably have been expected to sell if it were not so designated or allocated,

the owner or person affected may serve on the State Government within such time and in such manner, as is prescribed by regulations, a notice (hereinafter referred to as “the purchase notice”) requiring the Appropriate Authority to purchase the interest in the land in accordance with the provisions of this Act.

(2) The purchase notice shall be accompanied by a copy of any application made by the applicant to the Planning Authority, and of any order or decision of that Authority and of the State Government, if any in respect of which the notice is given.

(3) On receipt of a purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records or both, as maybe necessary, which those authorities shall forward to

the State Government as soon as possible but not later than thirty days from the date of their requisition.

(4) On receiving such records or reports, if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, and that the order or decision for permission was not duly made on the ground that the applicant did not comply with any of the provisions of this Act or rules or regulations, it may confirm the purchase notice, or direct that planning permission be granted without condition or subject to such conditions as will make the land capable of reasonably beneficial use. In any other case, it may refuse to confirm the purchase notice, but in that case, it shall give the applicant a reasonable opportunity of being heard.

(5) If within a period of six months from the date on which a purchase notice is served the State Government does not pass any final order thereon, the notice shall be deemed to have been confirmed at the expiration of that period.

(6)

(7) If within one year from the date of confirmation of the notice, the Appropriate Authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under section 126, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed; and thereupon, the land shall be deemed to be released from the reservation, designation or, as the case may be, allotment, indication or restriction and shall become available to the owner for the purpose of development otherwise permissible in the case of adjacent land, under the relevant plan.

9 The said provision is carved out by the legislature as an obligation to acquire land on refusal of permission or grant of permission in certain cases, as can be discerned from the marginal note of the said section. Sub-section (1) of Section 49 contemplates several situations where the owner of the land or the 'person affected' may serve on the State Government a notice referred to as 'the Purchase Notice' requiring appropriate authority to purchase the interest in the land in accordance with the provisions of the Act. The contingencies contemplated when such a notice can be served are mutually exclusive/independent of each other and are contained in clauses(a), (b), (c), (d) and (e). Any owner of the land referred to in the aforesaid clause or the person affected by staking his claim as contemplated in clause (i) and (ii) i.e. the land has become incapable of reasonably beneficial use in its existing state or (ii) where the planning permission is given (subject to conditions) that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with the conditions, it is this owner who falls within any of the category (a), (b), (c), (d) (e) may serve a Purchase Notice.

 Sub-section (1) of Section 49 on its plain reading is indicative of the several contingencies pertaining to the land of an owner and all the contingencies are carved out as independent exigencies and this can very well be inferred since the word “or” is indicative that each contingency/situation is to be read

disjunctively. The attempt of Shri Pethe is to read the said provision to convey and interpret it by restricting clauses (i) and (ii) to clause (a) of sub-section (1).

10 The said submission needs to be tested. The State Government has rejected the Purchase Notice on the ground that the petitioner has not preferred any application for development of the remaining plot of land unaffected by the reservation to the Corporation. According to Shri Pethe, it is only when the permission for development is refused or granted subject to conditions the claim can be staked to the effect contemplating under clause (i) or (ii) or clause (e), where the owner of the land because of its designation or allocation in any plan claims that he is unable to sell it expect at a lower price than that at which he might have been reasonably expected to sell, if it is not so designated. Emphasis of Shri Pethe is on sub-section (2) of Section 49 which make it imperative for the Purchase Notice to be accompanied by a copy of the application made by the applicant to the planning authority and any order or decision of that authority. We are unable to accede ourselves to the submission of Shri Pethe. The effort while interpreting a statute should be to read it as it is if the reading creates an ambiguity, apply the rules of interpretation. Sub-section (2) is unambiguous and it simply conveys that the Purchase Notice shall be accompanied by a copy of any application made by the applicant

to the planning authority and of any order or decision of that authority and of the State Government on such application, if any, in respect of which notice is given. Sub-section (2) thus intends to cover only that contingency where any application was preferred to the planning authority and which has resulted into any order or decision of that authority and of the State Government. Sub-section (2) however cannot be read to be applicable to each of the contingencies in sub-section (1) but it will have to relate itself only where any application has been preferred to the planning authority and any order or decision on the same. The indication is to be found in sub-section (3) which provides that on receipt of the purchase notice, the State Government shall forthwith call from the Planning Authority and the Appropriate Authority such report or records as may be necessary. Sub-section (4) further stipulates that on receipt of such reports or records if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled and that the order or decision for permission was not duly made or subject to such conditions on the ground that the applicant did not comply with the provisions of the Act or Rules or Regulations, it may confirm the purchase notice or direct that the planning permission may be granted without condition as will make the land capable of reasonably beneficial use. Sub-section (7) contemplates that if within one year from the date of confirmation of the notice, there is failure on the part of the

appropriate authority to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment or the restriction imposed on the development of the land shall be deemed to have lapsed and thereupon the land stands released from the said reservation/designation or restriction and becomes available to the owner.

11 Section 49 of the MRTP Act is a provision which enables the owner or the person affected by the designation of his land subjected to compulsory acquisition or where the land is designated for a proposed highway to be constructed or included or where the owner of the land has preferred an application seeking permission for development and the same is refused or is granted subject to the conditions and he contemplates any of the contingency stipulated in clause (i) and (ii) of sub-clause (d) of sub-section (1) or the contingency as envisaged in clause (e) of sub-section (2), it is open for him to serve on the State Government a notice requiring the appropriate authority to purchase his interest in the land in accordance with the provisions of the Act. Pertinent to note that Section 49 of the Act is not prefaced by the requirement that the land which is a subject matter of reservation, allotment or designation for any purpose has not been acquired within the stipulated period from the date of publication of the final regional or Development Plan and the

lapse of period of 10 years is not a condition precedent for invoking the provision contained in Section 49. The said provision empowers the owner or the person affected to serve on the State Government a notice requiring the appropriate authority to purchase his interest in the backdrop of the specified contingencies enumerated in sub-section (1). The scheme of MRTP postulates an application for permission for development to be preferred under Section 44 before carrying out development on any land. While conferring such a permission under Section 46, it is imperative for the Planning Authority to have due regard to provisions of any draft or any final plan sanctioned. It is open for the Planning Authority to refuse the development permission on the ground that the land is reserved in the draft device Development Plan for the public purpose and such a designation of land subject to compulsory acquisition or where it is indicated as land on which the highway is proposed to be constructed or included or any land where the permission is granted subject to certain conditions and the owner claims that the land has become incapable of reasonable beneficial use in the existing State or that it cannot be rendered capable of reasonably beneficial use in light of the conditions imposed for development or where the owner of the land claims that because of the designation/ reservation of the land in the plan, he is unable to sell it except at a lower price when what he might reasonably have been expected to sell the land, it is then open for him to issue a purchase notice to the State

Government. The Apex Court in case of ***Chhabildas Vs. State of Maharashtra, 2018(2) Scale 299***, clearly highlighted the principle underlying the claim contained in Section 49 in the following words :-

9 *The scheme of Section 49 of the MRTP Act is to lay down timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. The moment any of the conditions specified in the sub-section (1) are met, the owner or person affected may serve on the State Government, within the time and manner prescribed by regulations, a purchase notice requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.*

10 *On the receipt of the purchase notice as per sub-section (3), the State Government is to forthwith call from the planning authority or the appropriate authority such report or records as may be necessary, which the authority shall then forward to the State Government as soon as possible but not later than 30 days from the date of acquisition.*

11 *In sub-section (4), if the State Government is satisfied that the conditions specified in sub-section (1) are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions. Under sub-section (5), if the steps contemplated after service of purchase notice leads to a situation where the State Government does not pass any orders thereon, the notice shall be deemed to have been confirmed at the expiration of that period. And finally, under sub-section (7), if within one year from*

the date of confirmation of purchase notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed. Section 49(6), which was deleted by Maharashtra Act 6 of 1976, read as follows:

“Upon confirmation of the notice, the State Government shall proceed to acquire the land or that part of any land regarding which the notice has been confirmed, within one year of the confirmation of the purchase notice, in accordance with the provisions of Chapter VII.” It is clear that, under this provision, if within one year from the confirmation of the purchase notice, the State Government did not acquire the land, then the consequence would be that the acquisition shall be deemed to have lapsed. This was a salutary provision, but seems to have been deleted so that Section 49 cases are brought on par with Section 126 cases.

12 *The object of [Section 49](#) is thus clear that once a purchase notice is received by the authorities, there arises, as the marginal note to the Section also indicates, an obligation to acquire land. The timelines contemplated by the section also indicate that the owner or person affected cannot be left to hang indefinitely without a decision to follow up the purchase notice by acquisition of the land in question.*

13 *However, it has been argued on behalf of the State that [Section 49](#) abruptly ends with sub-section (7), after which there are no timelines indicated as to what is to happen after the appropriate authority makes an application to acquire the land within one year from the date of confirmation of the notice. In our view, this argument must be rejected, inasmuch as*

Section 49(1) itself states that the purchase notice must require the appropriate authority to purchase the interest in the land “in accordance with the provisions of this Act”. This being so, once the appropriate authority makes the necessary application to acquire the land within time under Section 49(7), we move over to Sections 126 and 127 of the Act.

The Apex Court on consideration of the principle underlying the said section and just opposing it against Section 126, culled out the position of law in paragraph no.24 of the report to the following effect :

24. On a conspectus of the above authorities, the following position in law emerges:

(1) In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

(2) If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of the Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

3 If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

12 This being the settled position of law in the case in hand and in the backdrop of the undisputed facts, the petitioner served a notice under Section 49 on the State Government with a specific plea that he is unable to sell the land except at a lower price than at which he would have reasonably been expected to sell it, if it was not so designated in the Development Plan, and invoked clauses (a), (b) and (e) of sub-section (1) of Section 49, the State Government rejects the same by the impugned order on the specious ground that the petitioner has not forwarded any proposal for development of the land to the Corporation and therefore, it could not be said that the petitioner is deprived from the beneficial use of the said land. It is on this count the petitioner received the rejection under sub-section (4) of Section 49 in respect of purchase notice served upon the State Government. At this stage we are not concerned with the drill to be carried out when such a notice is confirmed and therefore, we

need not advert ourselves to the authoritative pronouncement cited before us as regards the procedure to be followed on expiry of the period of one year from the date of confirmation of the notice, though the position of law to that effect has now been well settled. In the case in hand, we are at a very premier stage where the State Government has refused to confirm purchase notice served by the petitioner. From the impugned order, it is apparent that the State Government has refused to confirm the said purchase notice on the ground that the petitioner did not submit any proposal for development to the planning authority and therefore, he is not in a position to put the land to use in a manner which is not reasonably beneficial. We do not think that the plain reading of Section 49 would lead to such an inference and the State Government is justified in refusing the confirmation of the purchase notice on this premise. As stated above, there is a clear distinction between the provision of Section 126 and Section 49 and a perusal of Section 126 would clearly reveal that sub-section (2) of the said section clearly mentions the exclusion of Section 49 and it results into lapsing of reservation as contemplated under Section 127 of the Act in a situation as contemplated in sub-section (1) of Section 127. Perusal of Section 49 contemplates several contingencies resulting into an obligation to acquire the land. The contingencies enumerated are independent of each other and one of the contingency contemplated is whether the permission for development is

sought and the same is refused or is granted subject to such conditions and in such a contingency, the owner of the land may claim that the land has become incapable of reasonable beneficial use in its existing state or that it cannot be rendered capable of reasonably beneficial use by carrying out the permitted development where the permission is granted subject to some conditions. However, clause (e) of sub-section (1) of Section 49 contemplates an independent contingency where the owner of land because of its designation or allocation in the plan claims that he is unable to sell it except at a lower price, then, that at which he might reasonably have been expected to sell, if it were not so designated or allocated. The purchase notice which is served in the backdrop of contingency contemplated in clause (d) of sub-section (1) of Section 49 can be related and connected to sub-section (2) of Section 49 where the purchase notice shall be accompanied by a copy of an application made and an order or decision of that authority, if at all there is any. The sequitor of the purchase notice culminates in sub-section(4) where the State Government is satisfied that the contingencies contemplated in clauses (a), (b), (c), (d) and (e) of sub-section(1) are fulfilled and that the order or decision for permission was not duly made on the ground that there was no compliance of certain provisions of the Act or Rules and it may confirm the purchase notice or it may direct the Planning Authority to grant permission subject to such conditions so as to enable the owner to make use of the land in a

reasonably beneficial manner. However, where there is a refusal to confirm purchase notice, it contemplates an opportunity of hearing being afforded to the person serving a notice.

13 Since the petitioner has pleaded his case put in the purchase notice by him on 17th November 2016 and has required the appropriate authority to purchase the interest in the land owned by him, by taking aid of clause (e) of sub-section (1) of Section 49 and has made it clear that since he is invoking the said clause, the notice is not accompanied with any application for development permission filed before the Planning Authority or any order passed by the said authority as contemplated in sub-section (2) of Section 49. When he specifically rests his case on clause (e) of sub-section (1) of Section 49 which according to us, is an independent contingency, not depending on clause (d) of sub-section (1), the net result as is derived at by the impugned order or the one which is sought to be put forth before us by the learned counsel for the Corporation would defeat the very purpose underlying Section 49. We are not inclined to constrict the operation of Section 49 merely to a factum where an application for permission for development is made and it is refused or is granted subject to the conditions. The provision contained in the legislature has to be read as it is and if there is no ambiguity in the same, it is not permissible for the Court to interpret it, when the interpretation is uncalled for. A plain

reading of Section 49 in its entirety take us to an irresistible conclusion which prompt us to quash and set aside the impugned order passed by the State Government.

14 The petitioner has sought a very limited relief in the Writ Petition and has prayed for quashing and setting aside the impugned order dated 5th April 2017 and also sought a direction to confirm the purchase notice under Section 49. In the alternative to these prayers, the petitioner has sought for a direction in the nature of mandamus directing respondent no.1 to consider the application preferred by the petitioner under Section 49 of the MRTP Act, 1966. We deem it expedient to grant the said relief in terms of prayer clause (c) since we are of the view that an opportunity must be afforded to the State Government to call for records or reports as may be necessary so as to take a decision of either confirming the notice being satisfied with the contention raised in the purchase notice or it may refuse to confirm the purchase notice in view of the fact that the contingencies stipulated in sub-section (1) of Section 49 are not made out in the purchase notice.

15 For the aforesaid reason, we issue a writ in the nature of mandamus directing the State Government to consider the application preferred by the petitioner on 17th November 2016. Since the application has been rejected by an order dated 5th April

2017 by passing the impugned order and more than one year has lapsed since the impugned order has been passed, we direct the State Government to consider the said application of the petitioner within a period of three months from today.

16 With the aforesaid direction, Writ Petition is made absolute in terms of prayer clause (c).

No order as to costs.

SMT. BHARATI DANGRE, J

RANJIT V. MORE, J